IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.192 OF 2004
IN
SUMMARY SUIT NO.431 OF 2004

Shroff Publishers and Distributors P.Ltd. ..Plaintiffs

Vs.

Hari Shri Ramaiah ..Defendant

Ms.Anita Castalino i/b Pandya and Co. for the plaintiffs

Mr.Vijay Surekha i/b Wadia Gandy and Co. for the defendant

CORAM : S.U.KAMDAR, J
DATED : 21ST SEPTEMBER, 2005

P.C.:

1. The present suit is filed in respect of goods sold and delivered. There is amount due and payable of Rs.7,59,577/- being principal amount and interest thereon of Rs.4,56,265/- totalling to Rs.12,15,482/-.

2. The learned counsel for the defendant has firstly contended that this court has no jurisdiction and therefore, unconditional leave to defend be granted. In so far as Jurisdiction part is concerned, admittedly goods are sold and

delivered from Bombay to Bangalore and therefore material part of cause of action has arose in Bombay. Clause 9 of the invoice indicates "All disputes Subject to Mumbai Jurisdiction only" This court has concurrent jurisdiction and in view of the agreement between the parties this court will have jurisdiction to entertain and try the present suit.

3. I do not find any merits in the aforesaid contention. The next contention raised is that goods are not based on invoice and delivery challans. From the perusal of the plaint and Ex.A to the plaint, it is clear that each and every invoice details are given and the claim is based in respect of said goods sold and delivered. The next defence raised by the learned counsel for the defendants is that there are cross transactions with sister concern and plaintiffs and under which the plaintiffs has to receive the amount. The said amount to be defenced in the present suit. In that view of the matter, I do not find any merits in the defence. I direct the defendants to deposit a sum of Rs.5 lacs within 4 weeks failing which

plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.